

# Exhibit 1

## **DEFENDANTS' NOTICE OF REMOVAL**

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2 & BALINT, P.C.  
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RECEIVED  
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JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

10 Attorneys for Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF MARIN

13 VIVIAN BOGDANIC, On Behalf of  
14 Herself and All Others Similarly  
15 Situated,

16 Plaintiff,

17 v.

18 PHILOSOPHY, INC., an Arizona  
19 company, PHILOSOPHY  
20 MEZZANINE CORP., a Delaware  
21 corporation, and COTY, INC., a  
22 Delaware company,

23 Defendants.

24 Case No. C1702773  
25 CLASS ACTION COMPLAINT  
26 FOR:

27 VIOLATION OF THE UNFAIR  
28 COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*

1 Plaintiff Vivian Bogdanic brings this action on behalf of herself and all  
 2 others similarly situated against Defendants Philosophy, Inc., Philosophy  
 3 Mezzanine Corp., and Coty, Inc. and states:

4 **NATURE OF ACTION**

5 1. Defendants manufacture, market, sell and distribute several skin care  
 6 creams in their Philosophy “ultimate miracle worker” line. Four of the products are:  
 7 ultimate miracle worker *eye* multi-rejuvenating eye cream, ultimate miracle worker  
 8 multi-rejuvenating cream, ultimate miracle worker multi-rejuvenating lightweight  
 9 emulsion, and ultimate miracle worker *night* multi-rejuvenating nighttime serum-  
 10 in-cream (collectively, “Ultimate Miracle Worker Products” or the “Products”).<sup>1</sup>  
 11 The Products are sold online and in major mass retail outlets such as Sephora, Ulta,  
 12 Nordstrom, and Macy’s.

13 2. The Products are marketed as drugs. Drugs are held to a higher  
 14 standard than cosmetics, requiring pre-approval from the FDA and their represented  
 15 benefits usually must be supported by randomized, placebo controlled, double-blind  
 16 clinical trials. Further, the label claims, including represented product benefits,  
 17 must be truthful and not misleading. Defendants have been selling and marketing  
 18 the Products unlawfully as drugs, without monographs for the Products’ active  
 19 ingredients, without subjecting the Products to the FDA New Drug Application  
 20 process, and without pre-approval from the FDA.

21 3. On the front of each and every Ultimate Miracle Worker Product  
 22 package, where consumers cannot miss it, Defendants represent that the Products  
 23 are “multi-rejuvenating”. Defendants affirmatively represent on every Product  
 24 package that the Products work “from the inside out” to “help your skin rebuild its  
 25 natural collagen” and help your skin “naturally rejuvenate itself”. The ultimate

27 <sup>1</sup> Plaintiff reserves the right to add additional products upon completion of  
 28 discovery.

1 miracle worker multi-rejuvenating cream and ultimate miracle worker multi-  
2 rejuvenating lightweight emulsion packages further represent that the products  
3 contain “dermatologically proven skin rejuvenators.” And, the ultimate miracle  
4 worker *night* multi-rejuvenating nighttime serum-in-cream also represents it is  
5 proven to improve “skin regeneration and epidermal repair while helping skin  
6 rebuild its natural collagen and rejuvenate its appearance layer by layer”  
7 (collectively, the “rejuvenation, regeneration, repair and collagen rebuilding  
8 representations” or “unlawful representations”). The rejuvenation, regeneration,  
9 repair and collagen rebuilding representations are drug claims.

10 4. As more fully set forth below, Plaintiff brings this action on behalf of  
11 herself and other similarly situated California consumers who have purchased the  
12 Products under the “unlawful” prong of the UCL. By means of the rejuvenation,  
13 regeneration, repair and collagen rebuilding representations, the Products claim to  
14 affect the structure of skin making them a drug. By selling the Ultimate Miracle  
15 Worker Products without monographs for the Products’ active ingredients and  
16 without submitting New Drug Applications to the FDA and obtaining FDA  
17 approval to sell these drugs, Defendants have been selling and marketing the  
18 Products “unlawfully”.

19 5. As more fully set forth below, Plaintiff also brings this action on  
20 behalf of herself and other similarly situated California consumers who have  
21 purchased the Ultimate Miracle Worker Products under the “fraudulent” prong of  
22 the UCL. Defendants sell the Products with the unlawful rejuvenation, regeneration,  
23 repair and collagen rebuilding representations on each and every Product package,  
24 where they cannot be missed by consumers. Consumers comparing the Products  
25 with other Philosophy or competitor products without the unlawful representations  
26 but otherwise comparable to the Ultimate Miracle Worker Products are likely to be  
27 misled into believing that the Ultimate Miracle Worker Products are of higher  
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1 quality and/or provide superior skin benefits than lower priced competitors' 2 products or lower priced Philosophy skin care creams without the unlawful 3 representations. Plaintiff seeks to halt the dissemination of these misleading and 4 deceptive advertising messages, correct the misleading perception they have created 5 in the minds of consumers, and obtain redress for those who have purchased the 6 Products. Plaintiff and Class members paid a substantial (approximately \$6.50-\$64 7 per ounce) price premium for the Ultimate Miracle Worker Products with the 8 rejuvenation, regeneration, repair and collagen rebuilding representations over other 9 comparable Philosophy and competitor products that do not make unlawful drug 10 claims. For example, Defendants offer a non-ultimate miracle worker Philosophy 11 "renewed hope in a jar *eye*" product that retails for approximately \$102 per ounce 12 and Origins brand "Eye Doctor" retails for approximately \$76 per ounce compared 13 to the ultimate miracle worker *eye* multi-rejuvenating eye cream that retails for 14 \$140 per ounce. Similarly, Origins brand "GinZing Energy-boosting moisturizer" 15 retails for approximately \$16 per ounce, its "High Potency Night-A-Mins Mineral- 16 enriched renewal cream" retails for approximately \$25 per ounce, and its "Dr. 17 Andrew Weil for Origins Mega-Bright SPF 30 Skin Tone Correcting Oil-Free 18 Moisturizer" retails for approximately \$31 per ounce compared to the Ultimate 19 Miracle Worker Products that retail between \$37.50 to \$50 per ounce depending on 20 the particular product. These other non-ultimate miracle worker Philosophy and 21 competitor products share several common main ingredients with the Ultimate 22 Miracle Worker Products and are sold at the same retail establishments right next 23 to, or in close proximity to each other. And, when consumers look at the Ultimate 24 Miracle Worker Products online, the above identified non-ultimate miracle worker 25 philosophy and Origins products are listed as "similar products." Based on 26 violations of California's unfair competition laws (detailed below), Plaintiff seeks 27 injunctive and monetary relief for consumers who purchased the Products.

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction over Defendants and the claims set forth  
3 below pursuant to Code of Civil Procedure §410.10 and the California Constitution,  
4 Article VI §10 because this case is a cause not given by statute to other trial courts.

5 7. This Court has personal jurisdiction over Defendants because  
6 Defendants are authorized to conduct and do conduct business in California,  
7 including Marin County. Defendants have marketed, promoted, distributed, and  
8 sold Ultimate Miracle Worker Products in Marin County, causing Defendants to  
9 incur both obligations and liabilities in Marin County.

10 8. The amount in controversy does not exceed \$74,999.00 with respect to  
11 Plaintiff's claim and the Class members' claims as a whole do not exceed the  
12 jurisdictional limit of \$5,000,000 for purposes of establishing diversity jurisdiction  
13 pursuant to the Class Action Fairness Act. More than two thirds of the members of  
14 the Class currently reside in California. The amount in controversy requirement  
15 exceeds the jurisdiction minimum of this Court.

16 9. Venue is proper in Marin County because Defendants systematically  
17 and continuously transact business in Marin County, California and the transactions  
18 with Plaintiff took place in Marin County.

19 **PARTIES**

20 10. Plaintiff Vivian Bogdanic is a resident of Corte Madera, California.  
21 On approximately July 1, 2017, Plaintiff purchased ultimate miracle worker multi-  
22 rejuvenating lightweight emulsion from a Sephora store in Novato, California. She  
23 paid approximately \$75.00 for the Product. Plaintiff Bogdanic read the Product  
24 package and relied on Defendants' rejuvenation, regeneration, repair and collagen  
25 rebuilding representations when she purchased the Products and she selected the  
26 Product instead of less expensive other Philosophy or competitor products based on  
27 the representations that the Product is "multi-rejuvenating", that it works "from the  
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1 inside out" to "help your skin rebuild its natural collagen" and help your skin  
2 "naturally rejuvenate itself", and that it contains "dermatologically proven skin  
3 rejuvenators." Plaintiff would not have purchased the Product but for the  
4 rejuvenation, regeneration, repair and collagen rebuilding representations. She paid  
5 a substantial premium for the Product. Had Plaintiff known that the rejuvenation,  
6 regeneration, repair and collagen rebuilding representations were unapproved drug  
7 claims such that the Product was being sold illegally, that no evidence of the  
8 Product's effectiveness or safety had been presented to the FDA, and that the  
9 Product was not found by the FDA to be safe or to actually provide the represented  
10 rejuvenation, regeneration, repair, and collagen benefits as required by law,  
11 Plaintiff would not have purchased the Product and certainly would not have paid a  
12 premium price for it. As a result, Plaintiff suffered injury in fact and lost money.

13 11. Defendant Philosophy, Inc. is an Arizona company with its principal  
14 place of business in Phoenix, Arizona. Philosophy, Inc. manufactures, distributes,  
15 markets and sells the Ultimate Miracle Worker Products and created the  
16 rejuvenation, regeneration, repair and collagen rebuilding representations, which it  
17 caused to be disseminated to consumers in California.

18 12. Defendant Philosophy Mezzanine Corp. is a Delaware corporation.  
19 Philosophy Mezzanine Corp. manufactures, distributes, markets and sells the  
20 Ultimate Miracle Worker Products and created the rejuvenation, regeneration,  
21 repair and collagen rebuilding representations, which it caused to be disseminated  
22 to consumers in California.

23 13. Defendant Coty, Inc. is a Delaware company with its principal place of  
24 business in New York City, New York. Coty, Inc. manufactures, distributes,  
25 markets and sells the Ultimate Miracle Worker Products under its Philosophy brand  
26 with the rejuvenation, regeneration, repair and collagen rebuilding representations,  
27 which it caused to be disseminated to consumers in California.

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## FACTUAL ALLEGATIONS

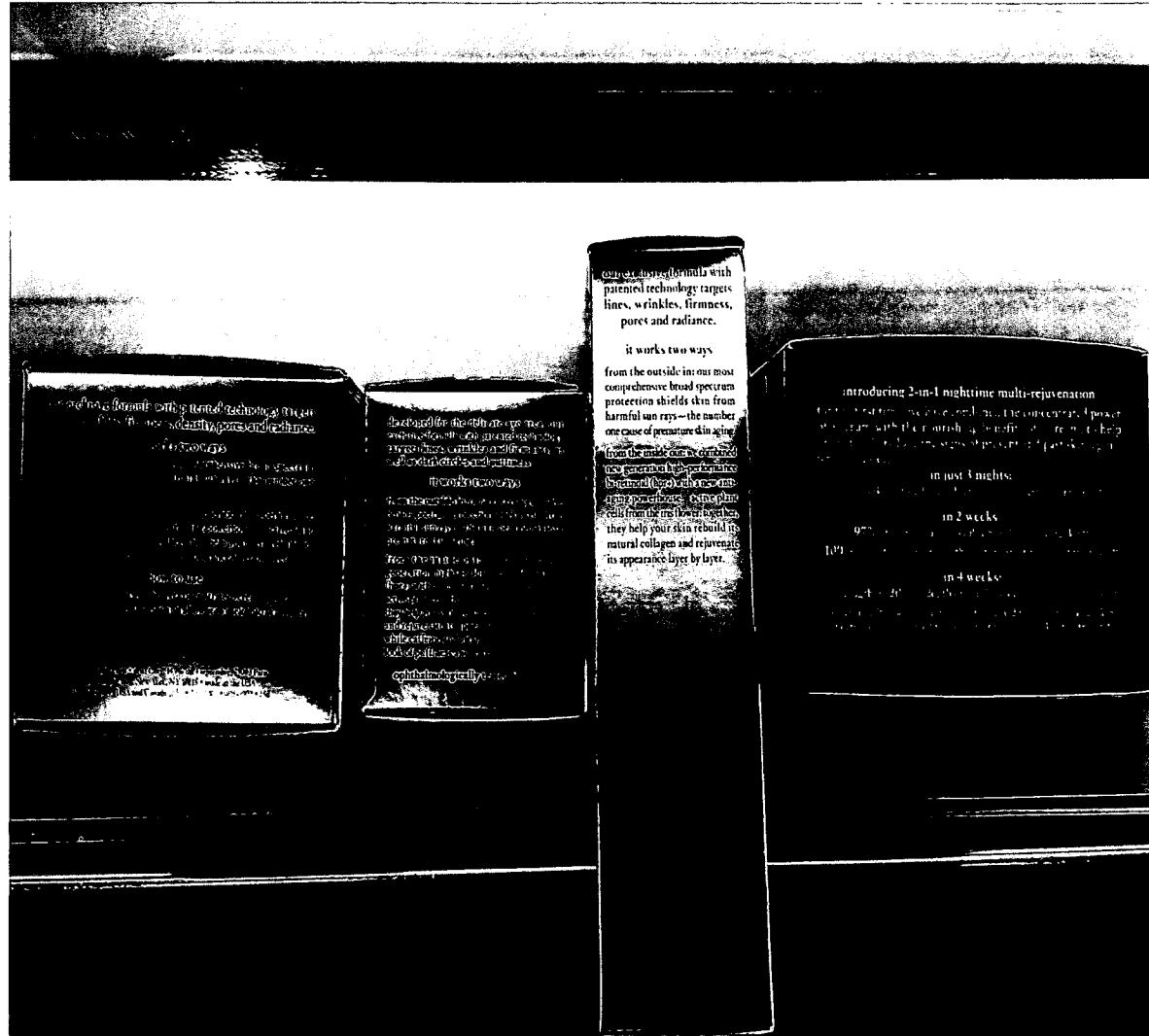
14. Defendants' rejuvenation, regeneration, repair and collagen rebuilding representations appear prominently and conspicuously on each Product package as follows:

5 The front of each package represents the Products are "multi-rejuvenating".



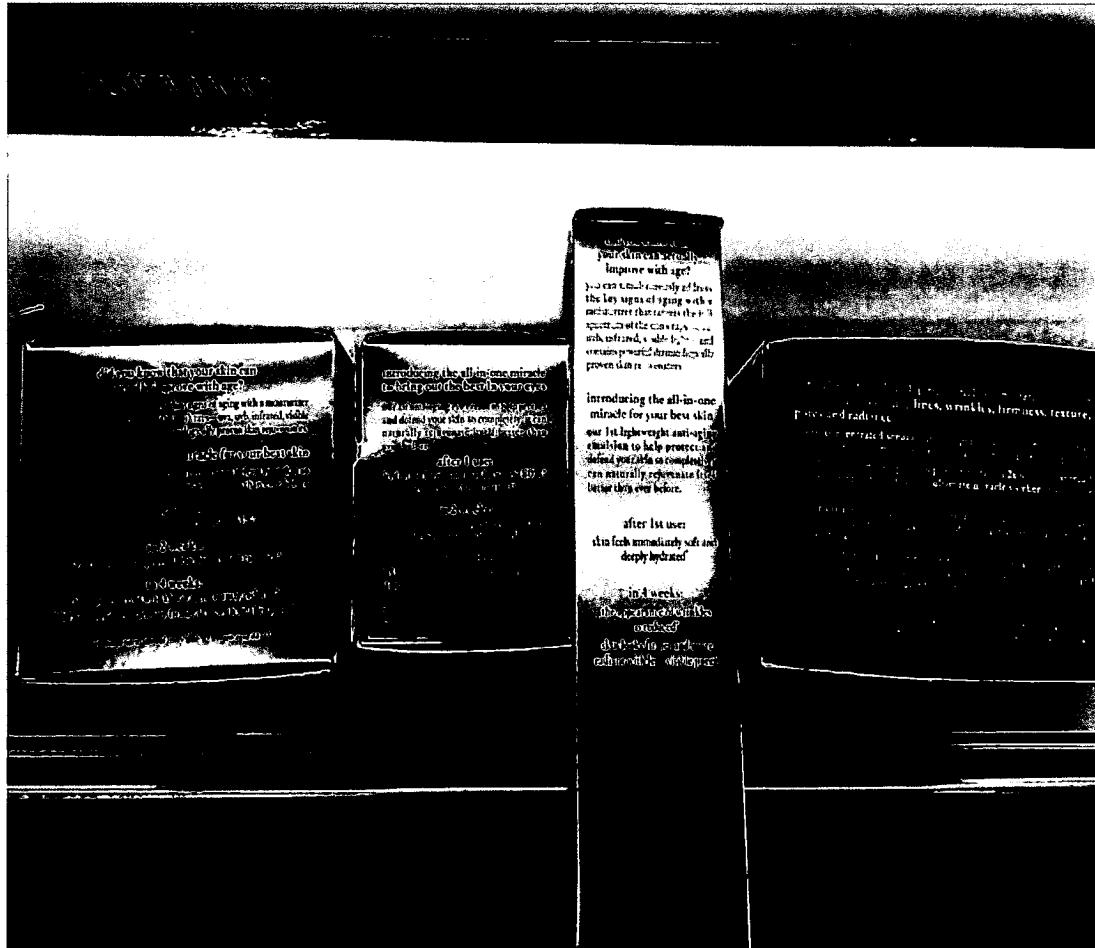
18 (front of 2 ounce ultimate miracle worker multi-rejuvenating cream, 0.5 ounce  
19 ultimate miracle worker *eye* multi-rejuvenating eye cream, 1.5 ounce ultimate  
20 miracle worker multi-rejuvenating lightweight emulsion, and 1.7 ounce ultimate  
21 miracle worker *night* multi-rejuvenating nighttime serum-in-cream, respectively).

1 The side panels all represent that the Products work “from the inside out” to  
2 “help your skin rebuild its natural collagen”.



(side #1 of ultimate miracle worker multi-rejuvenating cream, ultimate miracle worker *eye* multi-rejuvenating eye cream, ultimate miracle worker multi-rejuvenating lightweight emulsion, and ultimate miracle worker *night* multi-rejuvenating nighttime serum-in-cream, respectively).

The side panels also all represent that the Products help your skin “naturally rejuvenate itself”.



(side #2 of ultimate miracle worker multi-rejuvenating cream (also representing contains “dermatologically proven skin rejuvenators”), ultimate miracle worker *eye* multi-rejuvenating *eye* cream, ultimate miracle worker multi-rejuvenating lightweight emulsion (also representing contains “dermatologically proven skin rejuvenators”), and ultimate miracle worker *night* multi-rejuvenating nighttime serum-in-cream (also representing proven to improve “skin regeneration and epidermal repair while helping skin rebuild its natural collagen and rejuvenate its appearance layer by layer”), respectively).

Copies of representative labels are attached hereto as Exhibit A.

1       15. An over-the-counter skin cream can be a drug, a cosmetic, or a  
2 combination of both. 21 U.S.C. §359 (the categories of “drug” and “cosmetic” are  
3 not mutually exclusive).

4       16. The federal Food, Drug, and Cosmetics Act (“FDCA”) (21 U.S.C.  
5 §§301, et. seq.) defines cosmetics as “articles intended to be rubbed, poured,  
6 sprinkled, or sprayed on, introduced into, or otherwise applied to the human body ...  
7 for cleansing, beautifying, promoting attractiveness, or altering the appearance.” 21  
8 U.S.C. §321(i). The Ultimate Miracle Worker Products are cosmetics.

9       17. Whether a cosmetic is also a drug depends on its “intended use.” 21  
10 U.S.C. § 321(g)(1)(A)-(C). A cosmetic is also a drug if it is “intended to affect the  
11 structure or any function of the body of man”. 21 U.S.C. § 321(g)(1).

12       18. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman  
13 FD&C”) (California’s Health & Safety Code §§109875, et. seq.) parallels the  
14 FDCA in material part and adopts all nonprescription drug regulations.

15       19. Like the FDCA, the Sherman FD&C defines a drug as “Any article  
16 other than food, that is used or intended to affect the structure or any function of the  
17 body of human beings.” Cal. Health & Safety Code § 109925(c).

18       20. Since at least 2012, and repeatedly thereafter, and as recently as  
19 October 18, 2016, the FDA has made clear that any representation that a product  
20 will increase the skin’s collagen – such as the Ultimate Miracle Worker Products’  
21 promise to rebuild the skin’s natural collagen – is a drug claim. In its industry  
22 publications, the FDA explains that products “intended to affect the structure or  
23 function of the body, such as the skin are drugs . . . even if they affect the  
24 appearance. So, if a product is intended, for example, to remove wrinkles or  
25 *increase the skin’s production of collagen*, it’s a drug or a medical device.”  
26 Wrinkle Treatments and Other Anti-aging Products, *available* at  
27 <http://www.fda.gov/Cosmetics/ProductsIngredients/Products/ucm388826.htm>

1 (emphasis added). And, consistent with its position that collagen production claims  
2 are drug claims, the FDA has sent numerous warning letters to product  
3 manufacturers making such claims without FDA approval or pursuant to an  
4 established monograph. *See, e.g.*, FDA's October 18, 2016 letter to PhytoCeuticals,  
5 Inc., *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm)  
6 (representations that products "assists in" and "facilitates" the "formation of  
7 collagen" and "collagen production" indicate that products are drugs); FDA's  
8 September 20, 2016 letter to Face Naturals, *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525667.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525667.htm)  
9 (representation that product "boosts collagen production" indicate that product is a  
10 drug); FDA's August 29, 2016 letter to ZO Skin Health Group, LLC, *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm)  
11 (representation that product "Stimulates ... collagen production..." indicates that  
12 product is a drug); FDA's August 1, 2016 letter to Tata's Natural Alchemy, LLC,  
13 *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521011.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521011.htm)  
14 (representation that product "Stimulates healthy collagen production" indicates that  
15 product is a drug); FDA's July 22, 2016 letter to Peter Thomas Roth Labs, LLC,  
16 *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm504411.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm504411.htm)  
17 (representations that product "mimics body's own mechanism to produce collagen"  
18 and "promote[s] collagen production" indicate that product is a drug); FDA's July  
19 21, 2016 letter to La Bella Figura, LLC, *available at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm)  
20 (representations that products "help rebuild collagen", and "[S]timulate new  
21 collagen growth" indicate that products are drugs); FDA's July 20, 2016 letter to  
22

1 Finally Pure, LLC, *available* at  
2 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm)  
3 (representation that product “Aids in stimulating collagen production” indicates that  
4 product is a drug); FDA’s July 19, 2016 letter to Sevani Botanica, *available at*  
5 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm513404.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm513404.htm)  
6 (representation that product “encourages collagen production” indicates that  
7 product is a drug”); FDA’s July 18, 2016 letter to Michael Todd True Organics  
8 LLC, *available* at  
9 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm516160.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm516160.htm)  
10 (representation that products “stimulate collagen production” indicate that products  
11 are drugs); FDA’s July 15, 2016 letter to Annmarie Gianni Skin Care, *available at*  
12 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm)  
13 (representation that product provides a “new way for your skin to build collagen”  
14 indicates that product is a drug); FDA’s December 3, 2015 letter to Dr. Brandt  
15 Skincare, *available* at  
16 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm)  
17 (representation that product “[b]oosts collagen production” indicates that product is  
18 a drug); FDA’s May 22, 2015 letter to Pharmagel International, *available at*  
19 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm453709.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm453709.htm)  
20 (representation that the product “[S]timulates collagen production” indicates that  
21 the product is a drug); FDA’s March 25, 2015 letter to Skin Authority, LLC,  
22 *available* at  
23 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm440960.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm440960.htm)  
24 (representation that product will “help stimulate collagen” indicates that product is  
25 a drug); FDA’s October 5, 2012 Warning Letter to Avon Products, Inc., *available*  
26 at  
27 <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323738.htm>  
28

1 htm (representation that product will help to “rebuild[] collagen” indicates that the  
 2 product is a drug); FDA’s October 5, 2012 letter to Bioque Technologies, *available*  
 3 *at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm)  
 4 (representation that product will “stimulate production of collagen” indicates that  
 5 the product is a drug); FDA’s September 21, 2012 letter to Andes Natural Skin  
 6 Care, LLC, *available* *at*  
 7 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321094.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321094.htm)  
 8 (representation that product will “help the skin to regenerate new collagen”  
 9 indicates that the product is a drug); FDA’s September 21, 2012 letter to Janson-  
 10 Beckett, *available* *at*  
 11 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321111.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm321111.htm)  
 12 (representations that products will “aid[] new collagen production” and “promote[]  
 13 collagen synthesis” indicate that the products are drugs); FDA’s September 7, 2012  
 14 letter to Greek Island Labs, *available* *at*  
 15 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm)  
 16 (representations that products will “help[] promote the development of collagen”  
 17 and “increase[] water soluble collagen” indicate that the products are drugs).

18 21. By representing that the Products will “help your skin rebuild its  
 19 natural collagen”, the Products are new drugs as defined in 21 U.S.C. § 321(p) and  
 20 Cal. Health & Safety Code § 109980(a).

21 22. The FDA has also warned that representations that a product will  
 22 “repair”, “regenerate”, and/or “rejuvenate” the skin – such as the Ultimate Miracle  
 23 Worker Products’ “multi-rejuvenating”, “epidermal repair”, and “proven skin  
 24 rejuvenators” representations – are drug claims. *See, e.g.*, FDA’s October 18, 2016  
 25 letter to PhytoCeuticals, Inc., *available* *at*  
 26 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm525938.htm)  
 27 (representations that products “assist[] in skin regeneration” indicate that products  
 28

1 are drugs); FDA's August 29, 2016 letter to ZO Skin Health Group, LLC, *available*  
 2 *at* [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm)  
 3 ("Stimulates cellular regeneration", "Promotes healthy cell regeneration" and  
 4 "Helps support skin's natural mechanism to repair damage" indicates that products  
 5 are drugs); FDA's September 7, 2012 letter to Greek Island Labs, *available at*  
 6 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318805.htm)  
 7 ("effective cell regenerator" that has "tissue regeneration properties" indicate that  
 8 the product is a drug); FDA's July 15, 2016 letter to Annmarie Gianni Skin Care,  
 9 *available* *at*  
 10 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm512070.htm) (a  
 11 "new way for your skin to ... repair itself" indicates that product is a drug); FDA's  
 12 July 20, 2016 letter to Finally Pure, LLC, *available at*  
 13 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm515125.htm)  
 14 ("Promotes skin repair and cell regeneration" indicates that product is a drug);  
 15 FDA's July 21, 2016 letter to La Bella Figura, LLC, *available at*  
 16 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm518518.htm)  
 17 (aids in "repairing skin" indicates that product is a drug); and FDA's December 3,  
 18 2015 letter to Dr. Brandt Skincare, *available at*  
 19 [www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm](http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm476560.htm)  
 20 ("[R]epairs damaged skin" indicates that product is a drug).

21       23. By representing the Products are "multi-rejuvenating", "skin  
 22 rejuvenators" and/or will improve "epidermal repair", the Products are new drugs  
 23 as defined in 21 U.S.C. § 321(p) and Cal. Health & Safety Code § 109980(a).

24       24. These structural improvement representations – as opposed to strictly  
 25 appearance enhancing representations (such as a product will improve or  
 26 temporarily maintain the appearance or feel of the skin by moisturizing or softening  
 27 the skin) – make the Products drugs.

1       25. Thus, by representing that the Products “help your skin rebuild its  
2 natural collagen”, “naturally rejuvenate itself”, improve “skin regeneration and  
3 epidermal repair” and contain “dermatologically proven skin rejuvenators”, the  
4 Products are new drugs as defined in 21 U.S.C. § 321(p) and Cal. Health & Safety  
5 Code § 109980(a).

6       26. Because they are new drugs, Defendants may not sell their Ultimate  
7 Miracle Worker Products without an approved New Drug Application (“NDA”).  
8 21 U.S.C. § 355(a); Cal. Health & Safety Code § 111550. Defendants do not have  
9 an approved NDA for any of the Ultimate Miracle Worker Products.

10       27. In lieu of an approved NDA, a drug may conform to a monograph for a  
11 particular drug category, as established by the FDA’s Over-the-Counter Drug  
12 Review. *See* FDA, “Is It a Cosmetic, a Drug, or Both? (Or Is It Soap?)”, *available at*  
13 <http://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm>. The OTC Drug Review process results in monographs for active ingredients,  
15 which establish whether the ingredients are safe and effective for certain uses. If the  
16 ingredients in a drug are generally recognized as safe for their intended uses, an  
17 approved New Drug Application is not required. *Id.* Products containing active  
18 ingredients that are nonmonograph require an approved New Drug Application for  
19 marketing. *See* FDA, “Over-the-Counter (OTC) Drug Monograph Process”,  
20 *available at*  
21 <http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedandapproved/ucm317137.htm>. None of the active ingredients in the Ultimate Miracle  
23 Worker Products conform to a monograph for skin rejuvenation, regeneration,  
24 repair or collagen building. Thus, the Ultimate Miracle Worker Products require an  
25 approved New Drug Application for marketing, which Defendants do not have.

26       28. Integral to the NDA process is demonstrating that the products are  
27 generally recognized as safe for their intended uses – here skin regeneration, repair,  
28

1 rejuvenation and rebuilding collagen. *See* FDA, Over-the-Counter (OTC) Drug  
 2 Monograph Process, *available* at  
 3 <http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand>  
 4 approved/ucm317137.htm; FDA, How Drugs are Developed and Approved,  
 5 *available* at  
 6 [www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm](http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm) (it is the responsibility of the company seeking to market  
 7 a drug to test it and submit evidence that it is safe and effective). By failing to have  
 8 their Ultimate Miracle Worker Products screened and approved for safety,  
 9 Defendants are putting consumers at risk of adverse reactions and other ill effects  
 10 from their indicated use.

12 29. By making the unlawful representations Defendants also are able to  
 13 charge a substantial premium for their Ultimate Miracle Worker Products over what  
 14 they and competitors charge for similar products without the unlawful drug claims.  
 15 Consequently, consumers are paying for premium priced unlawful drugs banned by  
 16 law from sale because they have not been found effective for their represented  
 17 structural skin benefits rendering them valueless or, at a minimum, overpriced.

18 30. For all these reasons, Defendants should be enjoined from selling the  
 19 Ultimate Miracle Worker Products with the illegal rejuvenation, regeneration,  
 20 repair and collagen rebuilding representations and consumers, like Plaintiff, who  
 21 purchased the illegal drugs must be refunded their money or, at a minimum, the  
 22 premium they paid to purchase Defendants' illegal Products.

23 **CLASS DEFINITION AND ALLEGATIONS**

24 31. Plaintiff brings this action on behalf of herself and all other similarly  
 25 situated California consumers pursuant to C.C.P. §382 and Cal. Civ. Code §1781  
 26 and seeks certification of the following Class:  
 27  
 28

1 All consumers who, within the applicable statute of limitations period,  
2 purchased Ultimate Miracle Worker Products in California.

3 Excluded from this Class are Defendants and their officers, directors and  
4 employees and those who purchased Ultimate Miracle Worker Products for  
5 the purpose of resale.<sup>2</sup>

6 32. Plaintiff and the members of the Class are so numerous and  
7 geographically dispersed throughout the state of California that joinder of all  
8 members of the Class individually is impracticable. While the exact number and  
9 identities of the Class members are presently unknown, such information can be  
10 obtained through appropriate investigation and discovery.

11 33. The disposition of Plaintiff's and proposed Class members' claims in a  
12 class action will provide substantial benefits to both the parties and the Court.

13 34. The proposed Class is ascertainable and there is a well-defined  
14 community of interest in the questions of law or fact alleged herein since the rights  
15 of each proposed Class member were infringed or violated in a similar fashion  
16 based upon Defendants' unlawful conduct.

17 35. This action involves common questions of law and fact, which  
18 predominate over any questions affecting individual Class members. These  
19 common legal and factual questions include, but are not limited to, the following:

20 (a) whether Defendants engaged in the unlawful sale of an illegal  
21 drug in violation of the FDCA and California's Sherman FD&C laws;  
22 (b) whether Defendants engaged in misleading and/or deceptive  
23 advertising;  
24 (c) whether the alleged conduct constitutes violations of the UCL;  
25 (d) whether Plaintiff and Class members are entitled to restitution;

26 27 28 <sup>2</sup> The Products are: ultimate miracle worker *eye* multi-rejuvenating eye cream,  
ultimate miracle worker multi-rejuvenating cream, ultimate miracle worker multi-  
rejuvenating lightweight emulsion, and ultimate miracle worker *night* multi-  
rejuvenating nighttime serum-in-cream. Plaintiff reserves the right to add additional  
products upon completion of discovery.

1 and

2 (e) whether Plaintiff is entitled to declaratory, equitable, and  
3 injunctive relief.

4 36. Judicial determination of the common legal and factual issues essential  
5 to this case would be far more efficient and economical as a class action than in  
6 piecemeal individual determinations.

7 37. Plaintiff's claims are typical of the claims of the members of the Class  
8 because, *inter alia*, all Class members were injured through the uniform misconduct  
9 described. Plaintiff is advancing the same claim and legal theories on behalf of  
10 herself and all members of the Class.

11 38. Plaintiff is willing and prepared to serve the Court and the proposed  
12 Class in a representative capacity with all of the obligations and duties material  
13 thereto. Plaintiff will fairly and adequately protect the interests of the members of  
14 the Class. Plaintiff has retained counsel experienced in complex consumer class  
15 action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff  
16 has no adverse or antagonistic interests to those of the Class.

17 39. Plaintiff seeks preliminary and permanent injunctive relief individually  
18 to enjoin and prevent Defendants from engaging in the acts described.

19 40. Unless a Class is certified, Defendants will retain monies received as a  
20 result of their conduct that were illegally taken from Plaintiff and Class members.

21 **COUNT I**  
22 **Violation of Business & Professions Code §17200, *et seq.***  
23 **Unlawful Business Acts and Practices**

24 41. Plaintiff repeats and re-alleges the allegations contained in the  
25 paragraphs above, as if fully set forth herein.

26 42. Plaintiff brings this claim individually and on behalf of the California  
27 Class.  
28

1       43. The Unfair Competition Law, Business & Professions Code §17200, *et*  
2 *seq.* (“UCL”), prohibits any “unlawful” business act or practice.

3       44. As alleged herein, Defendants engaged in illegal conduct by  
4 unlawfully making rejuvenation, regeneration, repair and collagen rebuilding  
5 representations about the Products that resulted in them being deemed drugs under  
6 FDA and Sherman Act regulations, but did so without monographs for the active  
7 ingredients and without obtaining required FDA approval through the NDA  
8 process. Defendants committed unlawful business practices by violating  
9 California’s Sherman Food, Drug and Cosmetic Law, California’s Health & Safety  
10 Code §§ 109875 *et seq.* and the Food Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et*  
11 *seq.* Plaintiff and the California Class reserve the right to allege other violations of  
12 law, which constitute other unlawful business acts or practices. Such conduct is  
13 ongoing and continues to this date.

14       45. Plaintiff and the California Class suffered “injury in fact”/economic  
15 loss by spending money on Products not generally recognized as safe and effective  
16 that, but for Defendants’ illegal conduct, would not have been on the market.

17       46. The NDA process and the FDA and Sherman Act  
18 misbranding/consumer protections are intended to ensure that if the consuming  
19 public (e.g., Plaintiff and the Class) are sold a product that is a drug as defined  
20 under the FDA law and regulations, that it will have been put through the rigorous  
21 NDA approval process to ensure that it is safe and effective.

22       47. The UCL unlawful prong is intended to hold Defendants who engage  
23 in unlawful conduct accountable for their violations by, among other things, paying  
24 full compensation to consumers who have purchased such illegally sold products  
25 that, by virtue of being banned from sale to the public, are valueless or, at a  
26 minimum, overpriced.

27       48. But for Defendants illegally selling the Ultimate Miracle Worker  
28

1 Products when they were unapproved and misbranded drugs and illegally placing  
2 them in the market for sale to the public, Plaintiff and the Class would never have  
3 purchased these illegal Products. As result of Defendants' illegal conduct, Plaintiff  
4 and the Class have suffered injury/economic loss and are entitled to a full refund of  
5 their purchase price or, at a minimum, a refund of the premium they paid for the  
6 Products.

7 49. Plaintiff, on behalf of herself, all other similarly situated California  
8 consumers, and the general public, seeks restitution of all money they paid for  
9 Defendants' illegally sold Products or, at a minimum, the premiums paid for the  
10 Products, consistent with Business & Professions Code §17203.

11 50. Plaintiff, on behalf of herself, seeks preliminary and permanent  
12 injunctive relief to enjoin and prevent Defendants from engaging in the acts  
13 described.

14 **COUNT II**  
15 **Violation of Business & Professions Code § 17200, *et seq.***  
16 **Fraudulent Business Acts and Practices**

17 51. Plaintiff repeats and re-alleges the allegations contained in the  
18 paragraphs above, as if fully set forth herein.

19 52. Plaintiff brings this claim individually and on behalf of the Class.

20 53. As alleged herein, Plaintiff has suffered injury in fact and lost money  
21 or property as a result of Defendants' conduct because she purchased the premium  
22 priced Ultimate Miracle Worker Product in reliance on Defendants' unlawful  
23 rejuvenation, regeneration, repair and collagen rebuilding representations instead of  
24 purchasing less-expensive comparable products that do not make unlawful drug  
25 claims.

26 54. The Unfair Competition Law, Business & Professions Code § 17200,  
27 *et seq.* ("UCL") prohibits any "fraudulent" business act or practice and any false or  
28 misleading advertising.

1       55. In the course of conducting business, Defendants committed fraudulent  
2 business acts or practices and disseminated Product packaging that is false,  
3 misleading, and/or likely to deceive the consuming public within the meaning of  
4 Business & Professions Code § 17200, *et seq.* by, *inter alia*, making the  
5 rejuvenation, regeneration, repair and collagen rebuilding representations (which  
6 also constitutes advertising within the meaning of § 17200) on each and every  
7 Ultimate Miracle Worker Product, as more fully set forth herein.

8       56. By making the unlawful rejuvenation, regeneration, repair and  
9 collagen rebuilding representations on their Products, Defendants misled consumers  
10 into believing that the Ultimate Miracle Worker Products are of a higher quality  
11 and/or provide superior skin benefits than other comparable products that comply  
12 with the law and do not make unlawful drug claims.

13       57. Plaintiff and other members of the Class have in fact been deceived as  
14 a result of their reliance on Defendants' unlawful representations. This reliance has  
15 caused harm to Plaintiff and other members of the Class who each purchased  
16 Defendants' Products. Plaintiff and other members of the Class have suffered injury  
17 in fact and lost money as a result of these false, misleading, and/or deceptive  
18 practices by paying a premium for Defendants' Products over similar products that  
19 do not make such unlawful drug claims.

20       58. Plaintiff, on behalf of herself, and all others similarly situated, and the  
21 general public, seeks restitution of the premium paid for Defendants' Ultimate  
22 Miracle Worker Products.

23       59. Plaintiff, on behalf of herself, seeks preliminary and permanent  
24 injunctive relief to enjoin and prevent Defendants from engaging in the acts  
25 described.

26

27

28



# **EXHIBIT A**

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## ultimate miracle worker

multi-rejuvenating cream  
broad spectrum spf 30 sunscreen  
wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

60 ml/2 fl. oz.

## ultimate miracle worker eye

multi-rejuvenating eye cream  
broad spectrum spf 15 sunblock  
wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

15 ml/0.5 fl. oz.

## ultimate miracle worker

multi-rejuvenating  
lightweight emulsion  
broad spectrum  
spf 30 sunscreen

wrinkles, firmness,  
pores, radiance

philosophy: the best  
is yet to come.

## ultimate miracle worker nigh

multi-rejuvenating nighttime  
serum-in-cream

wrinkles, firmness, texture, pores, radiance

philosophy: the best is yet to come.

serum: 10 ml/0.34 fl. oz. cream: 50 ml/1.7 fl. oz.

our exclusive formula with patented technology targets  
fine wrinkles, firmness, density, pores and radiance.

**It works two ways**

from the outside in: our most  
comprehensive broad spectrum  
protection shields skin from  
harmful sun rays—the number  
one cause of premature skin aging.

from the inside out: our patented  
new formula not only penetrates  
the skin but filters with ease into  
the bloodstream—allowing  
cells from the inside to target skin  
they help your skin rebuild its  
natural collagen and rejuvenate  
its appearance layer by layer.

**How to use**

Apply 1/2 oz. to face and neck morning and  
night. For best results, use with Max Rejuvenation Serum.

**Optimally targeted for:**

• Wrinkles • Fine Lines • Age Spots • Dark Circles • Eye Bags • Puffiness • Pores • Acne • Dry Skin • Oily Skin • Sensitive Skin • Combination Skin • Normal Skin • Dry Skin • Oily Skin • Sensitive Skin • Combination Skin • Normal Skin

**SKIN REJUVENATION**  
ANTI-AGING

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**Introducing 2-in-1 nighttime multi-rejuv' nation**

for the first time, we have combined the concentrated power  
of a serum with the nourishing benefits of a cream, to help  
dramatically reduce the signs of present and past skin aging,  
while you sleep.

**in just 3 nights:**  
you'll wake up to a dewy, vibrant and more-rested complexion\*

**in 2 weeks:**  
97% of women had noticeably healthier-looking skin\*\*

**100% dramatically improved the texture and firmness of their skin\*\***

**in 4 weeks:**  
the length, width and depth of wrinkles was significantly reduced\*  
more than half of women agreed that they had their best-looking skin in  
years— even compared to receiving professional skin treatments\*

\*Based on a double-blind, placebo-controlled study involving 45 women.



ultimate  
**miracle**  
worker

multi-rejuvenating  
lightweight emulsion  
broad spectrum  
spf 30 sunscreen

*wrinkles, firmness,  
pores, radiance*

---

**philosophy:** the best  
is yet to come.

our exclusive formula with patented technology targets lines, wrinkles, firmness, pores and radiance.

it works two ways

from the outside in: our most comprehensive broad spectrum protection shields skin from harmful sun rays--the number one cause of premature skin aging.

from the inside out we combined new generation high-performance bis-*UVA* (bpuv) with a new anti-aging powerhouse - active plant cells from the iris flower. together, they help your skin rebuild its natural collagen and rejuvenate its appearance layer by layer.

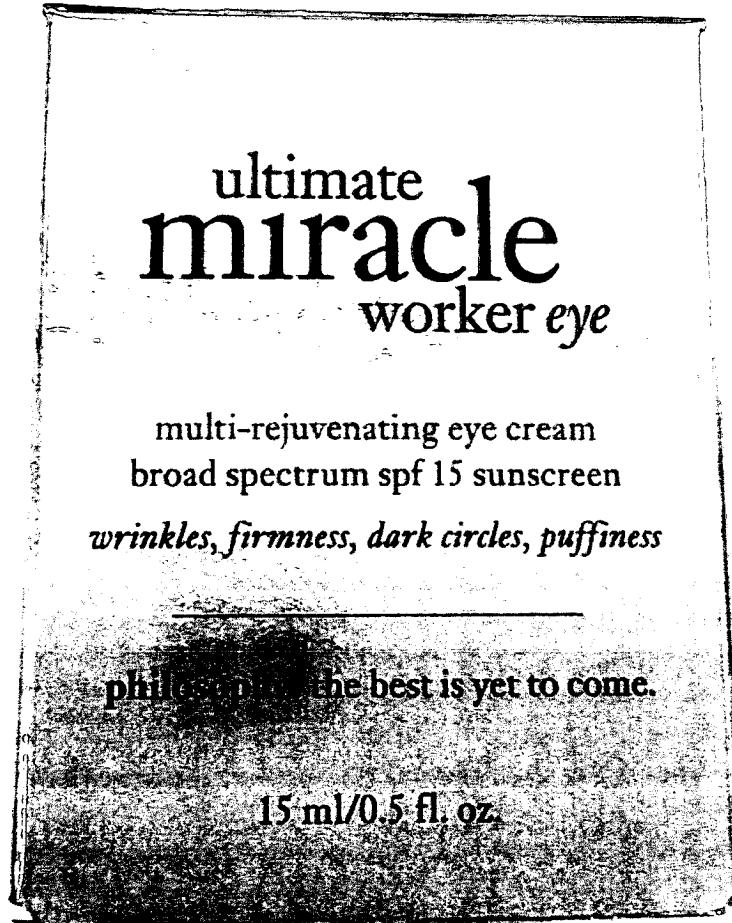
**did you know that  
your skin can actually  
improve with age?**

you can simultaneously address the key signs of aging with a moisturizer that targets the full spectrum of the sun's rays—uva, uvb, infrared, visible light—and contains powerful dermatologically proven skin rejuvenators.

**introducing the all-in-one  
miracle for your best skin**  
our 1st lightweight anti-aging emulsion to help protect and defend your skin so completely, it can naturally rejuvenate itself better than ever before.

**after 1st use:**  
skin feels immediately soft and  
deeply hydrated\*

**in 4 weeks:**  
the appearance of wrinkles  
is reduced\*  
skin looks firmer and more  
radiant with less-visible pores\*



developed for the delicate eye area, our exclusive formula with patented technology **targets lines, wrinkles and firmness, as well as dark circles and puffiness.**

**it works two ways**

**from the outside in:** our most comprehensive broad-spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

**from the inside out:** our unique combined new **bi-retinoid powerhouse—**

introducing the all-in-one miracle  
to bring out the best in your eyes

our 1st anti-aging eye cream to help protect  
and defend your skin so completely, it can  
naturally rejuvenate itself better than  
ever before.

**after 1 use:**  
hydration levels increase by nearly 80%\*  
eye area looks smoother\*\*

**in 2 weeks:**  
under-eye puffiness appears reduced for a  
fresher and healthier look\*\*

**in 4 weeks:**  
82% reduction in the appearance of wrinkles\*\*  
and 70% show dramatically firmer skin\*

Based on a double-blind, placebo-controlled study with 33 women ages 44-65  
Based on a double-blind, placebo-controlled study with 40 women ages 45-65



ultimate  
**miracle**  
worker

multi-rejuvenating cream  
broad spectrum spf 30 sunscreen

*wrinkles, firmness, density, pores, radiance*

---

**philosophy: the best is yet to come.**

60 ml/2 fl. oz.

our exclusive formula with patented technology targets  
**lines, wrinkles, firmness, density, pores and radiance.**

**it works two ways**

**from the outside in:** our most comprehensive broad spectrum protection shields skin from harmful sun rays—the number one cause of premature skin aging.

**from the inside out:** we combined new generation high-performance bi-retinoid (hpr+) with a new anti-aging powerhouse—active plant cells from the iris flower. together, they help your skin rebuild its natural collagen and rejuvenate its appearance layer by layer.

**how to use**

just a little of this lightweight, yet concentrated, cream goes a long way. apply a dime-size amount and allow it to melt into skin. apply more as needed.

philosophy.com • dist. Coty, 14 rue du 4 septembre, 75002 Paris  
philosophy.com • New York, NY 10118 • made in the USA  
18704 (for sale in Canada only) • 70531002 • 00531002 • 15d

**did you know that your skin can  
actually improve with age?**

can simultaneously address all key signs of aging with a moisturizer that's the full spectrum of the sun's rays—uva, uvb, infrared, visible—and contains powerful dermatologically proven skin rejuvenators.

all-in-one miracle for your best skin  
answer to help protect and defend your skin so  
it can rejuvenate itself better than ever before.

... by 73%\*

bestsellers

ultimate  
**miracle**  
worker *night*

multi-rejuvenating nighttime  
serum-in-cream

*wrinkles, firmness, texture, pores, radiance*

---

**philosophy:** the best is yet to come.

serum: 10 ml/0.34 fl. oz. cream: 50 ml/1.7 fl. oz.

introducing 2-in-1 nighttime multi-rejuvenation  
for the first time, we have combined the concentrated power  
of a serum with the nourishing benefits of a cream, to help  
dramatically reduce the signs of present and past skin-aging,  
while you sleep.

in just 3 nights:  
you'll wake up to a dewy, vibrant and more-rested complexion\*

in 2 weeks:

97% of women had noticeably healthier-looking skin\*\*  
100% dramatically improved the texture and firmness of their skin\*\*

in 4 weeks:

the length, width and depth of wrinkles was significantly reduced\*\*  
more than half of women agreed that they had their best-looking skin in  
years—even compared to receiving professional skin treatments\*

\*self-assessment study, 42 women ages 45-65 \*\*independent clinical study, 32 women ages 45-65

our exclusive formula with patented technologies targets all major signs of aging including **lines, wrinkles, firmness, texture, pores and radiance.**

**in our concentrated serum:** patented pearl system encapsulates active plant cells from the iris flower exceptionally rich in natural polyphenols.

for enhanced nighttime repair, this product contains a 2x more-concentrated dose of active plant cells than our **ultimate miracle worker** products for daytime use.

**in our cream:** patented high-performance bi-retinoid (hpr+) boasts targeted-release technology helping deliver active and stable retinol directly to skin cells.

both ingredients have been proven to help improve skin regeneration and epidermal repair while helping skin rebuild its natural collagen and rejuvenate its appearance layer by layer.

[philosophy.com](http://philosophy.com)

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